

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015041152

ORDER GRANTING MOTION TO  
AMEND COMPLAINT AND FINDING  
MATTER NON-EXPEDITED

On April 16, 2015, Student filed a due process hearing request (complaint), naming Rialto Unified School District. On May 22, 2015, Student filed an amended request for expedited due process hearing (amended complaint), seeking an expedited hearing date. On May 26, 2015, District filed an opposition. On May 28, 2015, Student filed a reply.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Due process hearings are expedited when a student alleges disagreement with a decision by a school district regarding a change in educational placement based upon a violation of a code of student conduct, or with a district's failure to hold a manifestation determination. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).)

DISCUSSION

Student's amended complaint adds additional factual allegations, divides issues into subparts, adds and restates claims, and adds that she is receiving tutoring from her mother. The motion to amend is timely and is granted.

Although characterized as a "de facto suspension," Student does not allege that District imposed a change of placement for violation of a code of conduct, or that a manifestation determination was required. The facts as alleged are clear, that Student seeks expedited status based on adult Student's refusal to return to school because she fears for her safety, and not based on any action on District's part concerning discipline or suspension. Therefore, the timelines in this matter will not be expedited.

## ORDER

1. The amended complaint does not state claims subject to an expedited hearing.
2. The amended complaint states only non-expedited claims.
3. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new (non-expedited) dates.

IT IS SO ORDERED.

DATE: May 28, 2015

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings